

Kirk D. Miller, WSBA No. 40025
Kirk D. Miller, P.S.
421 W. Riverside Ave., Ste. 660
Spokane, WA 99201
(509) 413-1494 Telephone
(509) 413-1724 Facsimile

Shayne J. Sutherland, WSBA No. 44593
Brian G. Cameron, WSBA No. 44905
Cameron Sutherland, PLLC
421 W. Riverside Ave., Ste. 660
Spokane, WA 99201
(509) 315-4507 Telephone
(509) 315-4585 Facsimile

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NICKOLAS BINGLE,)	
)	Case No.:
Plaintiff,)	
)	COMPLAINT FOR DAMAGES
vs.)	
)	JURY DEMANDED
PORTFOLIO RECOVERY)	
ASSOCIATES, LLC, a Delaware)	
limited liability company,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiff Nickolas Bingle (“Plaintiff”), a Washington resident, brings this action by and through his undersigned counsel, against Defendant Portfolio Recovery Associates, LLC (“Defendant PRA”), and alleges the following:

////

COMPLAINT - 1

II. JURISDICTION AND VENUE

2.1 Jurisdiction of this Court arises under 15 U.S.C. § 1692k (d), 28 U.S.C. § 1337 and 28 U.S.C. § 1331. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).

2.2 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1291(b)(2).

III. NATURE OF THE ACTION

3.1 Plaintiff brings this action for damages for Defendant PRA's actions of using unfair and unconscionable means to collect a debt.

3.2 Defendant PRA's actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collection Practices Act ("FDCPA") which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

3.3 Plaintiff is seeking damages, declaratory, and injunctive relief.

IV. PARTIES

4.1 Plaintiff is a natural person, a resident of Washington State, and is a "Consumer" as defined by 15 U.S.C. § 1692(a)(3).

4.2 Defendant PRA is a "debt collector," as defined by 15 U.S.C. § 1692a(6).

1 4.3 All acts done by Defendant PRA were done on its own behalf.

2 4.4 Defendant PRA is a Delaware limited liability company engaged in the
3 business of collecting debts in Washington State.

4 4.5 Defendant PRA's headquarters are located at 120 Corporate Blvd, Suite
5 100, Norfolk, VA 23502-4952.

6 4.6 Defendant PRA is a "collection agency," as defined by RCW
7 19.16.100(4)(d).

8 **V. ALLEGATIONS OF FACT**

9 5.1 Sometime prior to February 2017, Plaintiff allegedly incurred an
10 obligation to WebBank.

11 5.2 The WebBank obligation arose out of a transaction in which money,
12 property, insurance or services, which are the subject of the transaction,
13 are primarily for personal, family, or household purposes.

14 5.3 The alleged WebBank obligation is a "debt" as defined by 15 U.S.C. §
15 1692a(5).

16 5.4 On or about March 27, 2017, Plaintiff's alleged WebBank debt was sold
17 to Defendant PRA.

18 5.5 In September 2018, Defendant PRA sued Plaintiff in the Spokane
19 County Superior Court.

1 5.6 In October 2018, Defendant PRA obtained a default judgment against
2 Plaintiff.

3 5.7 In January 2019, Defendant PRA obtained a writ of garnishment against
4 Plaintiff's financial institution.

5 5.8 At or about the same date that the writ of garnishment was sent to the
6 Plaintiff's financial institution, Defendant PRA, through its counsel,
7 also sent an exemption claim form to the Plaintiff.

8 5.9 The exemption claim form sent to Plaintiff is a "communication" under
9 15 U.S.C. § 1692a(2).

10 5.10 RCW 6.27.130 requires that an exemption claim form be served or
11 mailed to the judgment debtor.

12 5.11 The exemption claim form found at RCW 6.27.140 is a mandatory form
13 that must be printed or typed in no smaller than size twelve-point font
14 and contain the statutorily-required contents.

15 5.12 The RCW 6.27.140 exemption claim form contains check boxes for
16 claiming specific exemptions for money in a financial institution,
17 including the following:

18 IF BANK ACCOUNT IS GARNISHED:
19 [] The account contains payments from:
20 [] Temporary assistance for needy
 families, SSI, or other public
 assistance. I receive \$ monthly.

- 1 [] Social Security. I receive \$
 monthly.
- 2 [] Veterans' Benefits. I receive \$
 monthly.
- 3 [] Federally qualified pension, such as a
4 state or federal pension, individual
 retirement account (IRA), or 401K
5 plan. I receive \$ monthly.
- 6 [] Unemployment Compensation. I
 receive \$ monthly.
- 7 [] Child support. I receive \$
 monthly.
- 8 [] Other. Explain
- 9 [] \$2,500 exemption for private student
 loan debts.
- 10 [] \$500 exemption for all other debts.
- 11 IF EXEMPTION IN BANK ACCOUNT
12 IS CLAIMED, ANSWER ONE OR
13 BOTH OF THE FOLLOWING:
- [] No money other than from above
 payments are in the account.
- [] Moneys in addition to the above
 payments have been deposited in the
 account. Explain

14

15 5.13 Defendant PRA removed two of the exemptions from the exemption
16 claim form.

17 5.14 The removed exemptions are those which allow for: 1) exemption of
18 \$2500 in student loan money; and 2) the \$500 cash exemption.

19 5.15 Defendant PRA's removal of these exemptions was intentional and
20 systematic.

1 5.16 Defendant PRA has sent out at least hundreds of exemption claim forms
2 to Washington residents with the aforementioned exemptions removed.

3 5.17 Defendant PRA's removal of the exemptions from the checkbox list
4 makes it more difficult for judgment debtors to claim exemptions.

5 5.18 Removing the exemptions that may be claimed by checking a box may
6 influence how and whether a consumer will respond to a garnishment.

7 **VI. FIRST CAUSE OF ACTION**
8 **Violations of the Fair Debt Collection Practices Act 15 U.S.C. §§ 1692e and**
 1692f, *et seq.*

9 6.1 Plaintiff repeats, reiterates, and incorporates the allegations contained
10 in the paragraphs above herein with the same force and effect as if the
11 same were set forth at length herein.

12 6.2 Defendant PRA's debt collection efforts attempted and/or directed
13 towards Plaintiff violated 15 U.S.C. §§ 1692e and 1692f of the FDCPA.

14 6.3 15 U.S.C. § 1692e states that a debt collector may not use any false,
15 deceptive, or misleading representation or means in connection with the
16 collection of any debt.

17 6.4 15 U.S.C. § 1692f states that a debt collector may not use any unfair or
18 unconscionable means to collect a debt.

6.5 Defendant PRA's removal of meaningful information from the exemption claim form is unfair, unconscionable, and violates 15 U.S.C. § 1692f.

6.6 By reason thereof, Defendant PRA is liable to Plaintiff for judgment that Defendant PRA's conduct violated 15 U.S.C. §§ 1692e and 1692f of the FDCPA, actual damages, statutory damages, costs and attorney's fees.

VII. REQUEST FOR PRESERVATION OF EVIDENCE

7.1 Preserve all forms of electronic data, regardless of where the data exists, without modification to or deletion of any potentially discoverable data;

7.2 Suspend all procedures that may alter or delete computer data;

7.3 Prevent deleting, overwriting, defragmenting, or compressing the data;

7.4 Preserve all archived back-up tapes and ensure that (a) if archive tapes are rotated, the relevant tapes are removed from the rotation; and (b) if backups are made to hard drives, preserve the hard drive as well;

7.5 Preserve the contents of all hard drives, network drives, tape drives, optical drives, floppy disks, CD and DVD drives, and all other types of drives or media that are within the possession, custody, or control

of all people who have knowledge of relevant facts and those who work with them, such as assistants;

7.6 Preserve the contents of all information on portable computers—such as laptops, palmtops, or tablets—used by those people, as well as home computers, if these are used for work purposes;

7.7 Preserve the contents of all data on computers that were used since the limitations period on the lawsuit began (for example; five years prior to filing) but that are no longer in use; and

7.8 Disclose electronic information in the Rule 26 initial disclosures.

VIII PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant PRA as follows:

8.1 Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(A) of \$1,000.00;

8.2 Awarding Plaintiff actual damages sustained under the FDCPA;

8.3 Reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3);

8.4 Declaratory judgment that Defendant PRA's practices complained of herein violate the FDCPA;

1 8.5 Injunctive relief permanently enjoining Defendant PRA's practices
2 complained of herein; and

3 8.6 Such other and further relief as the Court may deem just and proper.

4 DATED this 6th day of May, 2019.

5 Kirk D. Miller, P.S.

6 /s Kirk D. Miller

Kirk D. Miller, WSBA No. 40025

7 421 W. Riverside Ave., Ste. 660

Spokane, WA 99201

8 kmiller@millerlawspokane.com

9 *Attorney for Plaintiff*

10 Cameron Sutherland, PLLC

11 /s Shayne J. Sutherland

Shayne Sutherland, WSBA No. 44593

12 Brian G. Cameron, WSBA No. 44905

13 421 W. Riverside Ave., Ste. 660

Spokane, WA 99201

14 bcameron@cameronsutherland.com

ssutherland@cameronsutherland.com

15 *Attorneys for Plaintiff*